

IN THE UNITED STATES DISTRICT  
COURT EASTERN DISTRICT OF  
WISCONSIN

|   |   |                     |
|---|---|---------------------|
| The ESTATE OF SYLVILLE K. SMITH, by       | ) |                     |
| Personal Representative Mildred Haynes,   | ) | No. 17-cv-862       |
| Patrick Smith, and Mildred Haynes, on her | ) |                     |
| own behalf,                               | ) |                     |
|   | ) |                     |
| Plaintiffs,                               | ) | JURY TRIAL DEMANDED |
|   | ) |                     |
| v.  | ) |                     |
|   | ) |                     |
| CITY OF MILWAUKEE, WISCONSIN              | ) |                     |
| and DOMINIQUE HEAGGAN-BROWN,              | ) |                     |
|   | ) |                     |
| Defendants.                               | ) |                     |

## **EXHIBIT 2**

### Medical Examiner Trial Testimony

David B. Owens  
Danielle Hamilton  
LOEVY & LOEVY  
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Chicago, IL 60607  
(312) 243-5900

STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY  
BRANCH 30

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 2016-CF-005562

DOMINIQUE L. HEAGGAN-BROWN,

Defendant.

**JURY TRIAL - ALL DAY**

**JUNE 16, 2017**

**HON. JEFFREY A. CONEN,**  
Circuit Court Judge,  
presiding.

LAURELL L. BRESLOW-COLLIEN, RPR  
Official Court Reporter

**CHARGES:**

Count 1: First-Degree Reckless Homicide

**A P P E A R A N C E S:**

JOHN T. CHISHOLM, District Attorney, and BENJAMIN LINDSAY, Assistant District Attorney, appeared on behalf of the State of Wisconsin.

STEVEN R. KOHN and JONATHAN C. SMITH, Attorneys at Law, appeared on behalf of the Defendant.

DOMINIQUE L. HEAGGAN-BROWN, Defendant, was present in custody.

ALSO PRESENT: J. Michael Damarco, Investigator

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I N D E X

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E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                              | <u>ID'D</u> | <u>RCV'D</u> |
|------------|---|-------------|--------------|
| 53         | DCI Report of the Heaggan-Brown Interview ..... | 11          | 42           |
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E X H I B I T S (continued)

| <u>NO.</u> | <u>DESCRIPTION</u>   | <u>ID'D</u> | <u>RCV'D</u> |
|------------|--|-------------|--------------|
| 60         | Photograph .....   | 49          | 54           |
| 61         | Photograph .....   | 51          | 54           |
| 62         | Bullet Recovered at Autopsy .....                                  | 53          | 56           |
| 63         | Ballistics Report .....  | 61          | 68           |
| 65         | Box Containing the Test-Fired<br>Cartridge Cases and Bullets ..... | 60          | 68           |
| 69         | Box Containing Test-Fired Bullets<br>and Cartridge Cases .....     | 62          | 68           |
| 74         | Photograph .....   | 51          | 52           |

1 J-E-S-S-I-C-A, L-E-L-I-N-S-K-I.

2 THE COURT: All right.

3 MR. KOHN: Side-bar.

4 (An off-the-record side-bar was held  
5 and then continued in chambers.)

6 THE BAILIFF: All rise for the jury.

7 (The jury left the courtroom.)

8 THE BAILIFF: You may be seated.

9 THE COURT: We went into chambers to  
10 discuss an evidentiary matter, and now we're on a  
11 10-minute break.

12 (Recess taken from 10:39 a.m. until  
13 11:05 a.m.)

14 THE BAILIFF: All rise for the jury.

15 (The jury entered the courtroom.)

16 THE BAILIFF: You may be seated.

17 THE COURT: All right. We have all of  
18 our vital information on the record from before so  
19 you may proceed.

20 MR. LINDSAY: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MR. LINDSAY:

23 Q Good morning. How are you employed?

24 A I work as an assistant medical examiner for the  
25 Milwaukee County Medical Examiner's Office.

1 Q And what are your duties as an assistant medical  
2 examiner?

3 A My primary duty is to determine cause and manner  
4 of death, and often we do that by doing an autopsy  
5 on a body.

6 Q And did you conduct an autopsy for a decedent  
7 Sylville K. Smith?

8 A I did.

9 Q And can you briefly describe for the jury what you  
10 do as you conduct the autopsy and why you do that?

11 A So an autopsy is a medical procedure performed on  
12 a body after death, and we do that in cases where  
13 we need to evaluate disease and injury to find out  
14 why a person died.

15 So we start out by looking at the body  
16 externally, document what the person looks like,  
17 the clothes they have on, any injuries or sign of  
18 disease we can see from the outside. Then we  
19 proceed with an internal exam in which we look  
20 inside the head, the chest, and the abdomen, at  
21 all of the organs, look for any sign of disease,  
22 any sign of injury.

23 Also during an autopsy we collect items  
24 of evidence, if it applies in that case, things  
25 like a bullet that might be in a body, and also

1           specimens that we can use for drug and alcohol  
2           testing, so blood and other body fluids.

3       Q     And when you -- First of all, are you aware of how  
4           the decedent arrived at the medical examiner's  
5           office?

6       A     Can you explain what you mean by how he arrived?

7       Q     In what manner was he transported there?

8       A     According to our reports, there was a med unit  
9           that brought the body to our office.

10      Q     And what date did you conduct the autopsy on?

11      A     That was on August 15th of 2016.

12      Q     You indicated that you recover evidence during the  
13           course of the autopsy as well?

14      A     That's correct.

15      Q     Did you recover any clothing from the decedent in  
16           this case?

17      A     Yes. I documented the clothing and then removed  
18           it from the body before starting the autopsy.

19      Q     Did that include blue boxer briefs, a pair of  
20           shorts, and a blue and white tank top?

21      A     I believe it was a purple and white tank top, but  
22           yes, I did recover those items.

23      Q     I'm going to show you what's been marked for  
24           identification purposes as Exhibit No. 54. And  
25           I'm going to ask if you can identify what this

1 item is.

2 A This is a copy of my autopsy protocol, so this is  
3 the report that I put together after doing an  
4 autopsy that documents all of my findings.

5 Q And is that a true and accurate copy of the report  
6 that you generated for the autopsy of Sylville  
7 Smith?

8 A Yes, it is.

9 Q You previously testified that one, you are looking  
10 to identify the cause and the manner of death.  
11 Can you distinguish for the jury the difference  
12 between those two things?

13 A Yes. Cause of death refers to the disease or  
14 injury that killed a person. So it could be  
15 something like a heart attack, heart disease, or  
16 it could be some sort of injury, drug overdose,  
17 things like that. Manner of death is something we  
18 use to assign a category to the death to kind of  
19 explain what type of death it is, and the options  
20 that we have are natural, so if it's some sort of  
21 natural disease process that killed the person;  
22 suicide, which is when a person takes their own  
23 life; homicide, which means death at the hands of  
24 another person; accident, and that covers things  
25 like car accident, drug overdoses, drownings; and



1           then undetermined if we can't put a death in one  
2           of those specific categories.

3       Q     And when you say "homicide," the homicide as a  
4           manner of death is distinguishable from homicide  
5           as a criminal charge; is that correct?

6       A     That's correct.

7       Q     So when you say, for instance, that the manner of  
8           death in a certain case would be homicide, you're  
9           not weighing in as to whether a homicide was  
10          committed in the criminal sense?

11      A     That's correct.

12      Q     Now, with regard to your autopsy of the decedent  
13           in this case, what did you determine was the cause  
14           of death?

15      A     The cause of death I determined was gunshot wounds  
16           of the chest and right arm.

17      Q     And what did you determine was the manner of  
18           death?

19      A     The manner of death was homicide.

20      Q     Now, I'm going to show you a series of items that  
21           are identified as exhibits -- well, starting with  
22           57 and continuing through 61, these have been  
23           previously shown to the defense as well. And I'll  
24           just set Exhibit 54 to the side for the time  
25           being. I'd just ask that you take a look at these

1 items very briefly and tell me if you can identify  
2 what those are.

3 A These are photographs that were taken by me during  
4 the autopsy.

5 Q And I apologize, I think I said starting at 57.  
6 You have -- let's start with 56.

7 A I do have 56, which is also a photograph that I  
8 took at autopsy.

9 Q And what is Exhibit 56?

10 A It's a photograph showing the right arm that shows  
11 the entrance gunshot wound on the right arm.

12 Q And is that in the right bicep area?

13 A Correct.

14 Q And what is Exhibit No. 57?

15 A No. 57 shows the inner surface of the right arm  
16 where there's an exit gunshot wound.

17 Q And then 58?

18 A No. 58 is a view showing the front of the upper  
19 right arm where you can see both the entrance and  
20 the exit gunshot wound and a probe that shows that  
21 the two holes are connected.

22 Q And with regard to 59?

23 A 59 appears to be a slightly cropped photograph  
24 from what I took, and it shows both the upper arm  
25 and the chest, so you can see the two gunshot

1           wounds on the upper right arm and also an entrance  
2           gunshot wound on the upper right chest.

3       Q     And then what is Exhibit 60?

4       A     Exhibit 60 is a close-up photo of the entrance  
5           gunshot wound on the right upper chest.

6       Q     And these are all photographs that you took during  
7           the course of the autopsy on August 15th?

8       A     That's correct.

9       Q     And these are all injuries sustained to the body  
10          of Sylville Smith?

11      A     Yes.

12      Q     Are they accurate photographs representing the  
13          gunshot wounds that you observed?

14      A     Yes, they are.

15      Q     You've identified two gunshot wounds to Mr. Smith.  
16           I would like to start with the bicep, the injury  
17           to the bicep first. During the course of your  
18           autopsy, were you able to determine the extent of  
19           the injury there?

20      A     The gunshot wound pathway went fairly  
21           superficially through the arm just under the  
22           surface of the skin, so it went through soft  
23           tissue.

24      Q     In your estimation, was that injury to the right  
25          bicep likely a survivable injury?

1 A Yes.

2 Q With regard to the gunshot wound to the chest,  
3 were you able to determine the extent of the  
4 injury regarding that wound?

5 A Can you explain what you would like me to describe  
6 by "extent"?

7 Q Did you ever -- You indicated there was an entry  
8 wound. Did you ever find an exit wound for that  
9 injury?

10 A No, there is no exit wound. There was a bullet in  
11 the lower left side of the back that I recovered.

12 Q So during the course of the autopsy, did you  
13 attempt to determine the path that that bullet  
14 took through the decedent's body?

15 A Yes, I did.

16 Q And can you describe just very briefly the path  
17 that you were able to determine?

18 A The main things that the bullet path went through  
19 were the heart and the left lung.

20 Q And based on your observations of that injury, do  
21 you think the gunshot wound to the chest was  
22 likely a survivable injury?

23 A I do not think it was survivable.

24 Q And you indicated that you recovered a bullet from  
25 inside the body of the decedent?

1 A That's correct.

2 Q Where did you -- where did you recover that item?

3 A It was in the soft tissue on the lower left side  
4 of the back.

5 Q And can you describe just very briefly what  
6 Exhibit 61 is?

7 A Exhibit 61 is a photograph taken looking down at  
8 the chest after removing all of the organs, so you  
9 can see the back of the chest cavity, and it shows  
10 a gunshot wound that goes through the back left  
11 side of the chest. Just deep to that wound is  
12 where I recovered the bullet.

13 Q And I'm going to approach you with what's been  
14 marked as Exhibit 74, and I'll take Exhibits 56  
15 through 61 from you at this time. Do you  
16 recognize that item?

17 A Yes, I do.

18 Q And what is that item?

19 A This is a photograph that I took at the end of the  
20 autopsy of the bullet that I recovered from the  
21 left lower back.

22 Q And is that an accurate representation of the  
23 bullet that you recovered from the body of the  
24 decedent?

25 A Yes.

1 MR. LINDSAY: Your Honor, I would ask  
2 that Exhibits 56 through 61 be moved into  
3 evidence. I would also ask that Exhibit No. 74 --  
4 I believe that's the correct exhibit number --

5 THE WITNESS: Yes.

6 MR. LINDSAY: -- be moved in evidence.  
7 I would ask only to publish Exhibit 74 to the  
8 jury.

9 THE COURT: Well, any objection with  
10 admission first?

11 MR. SMITH: No objection.

12 THE COURT: They'll all be received.  
13 (Exhibits 54-61 and 74 were received.)

14 THE COURT: Let's see the lawyers at  
15 the side-bar with regarding publication.

16 (An off-the-record side-bar was held.)

17 THE COURT: All right. So that is 74,  
18 correct?

19 MR. LINDSAY: Correct.

20 THE COURT: That may be published.

21 (Exhibit 74 was published.)

22 BY MR. LINDSAY:

23 Q And can you describe for the jury exactly what  
24 they're looking at on the screen?

25 A So at the top of the screen you can see the bullet

1 sitting in a white towel. I wrote the location  
2 that I recovered the bullet from, 181 G-R stands  
3 for grains, so that's the weight of the bullet,  
4 and then at the bottom you can see part of what's  
5 a ruler. It's 5 centimeters long, just to act as  
6 a scale to show how big the bullet is. And then  
7 that ruler also has the case number, the autopsy  
8 case number.

9 Q And is this a perspective of the bullet looking  
10 from the top essentially?

11 A Correct.

12 Q I'm going to show you what's been marked for  
13 identification purposes as Exhibit No. 62. I'm  
14 going to ask if you recognize what Exhibit No. 62  
15 is.

16 A So Exhibit 62 is a sealed evidence bag, and what's  
17 in the bag is a smaller bag that I used at autopsy  
18 to place the bullet in labeled with our autopsy  
19 case number, and I had wrote the location that the  
20 bullet was recovered from, and then that was  
21 submitted to police as evidence.

22 Q And are you able to determine whether there's a  
23 medical examiner case number within that exhibit?

24 A Yes, there is.

25 Q And is your handwriting also contained within that

1 exhibit?

2 A Yes.

3 Q So once you recovered the bullet, what did you do  
4 with it at that point?

5 A After taking a photograph and weighing the bullet,  
6 I put it in this sealed bag, and then that was  
7 submitted to police.

8 Q And in this case the investigating agency was the  
9 Department of Justice?

10 A That's correct.

11 Q Dr. Lelinski, all of your testimony today and the  
12 conclusions that you reached in the performance of  
13 the autopsy, did you reach those conclusions to a  
14 reasonable degree of medical certainty?

15 A Yes, I did.

16 MR. LINDSAY: Your Honor, I would  
17 move -- oh, and I have one more thing. I  
18 apologize.

19 BY MR. LINDSAY:

20 Q I'm going to approach you with what's been marked  
21 as Exhibit No. 55, and defense counsel has a copy  
22 on his desk. I'm going to take Exhibit 54 from  
23 the witness stand and I'm going to take Exhibit 62  
24 from the witness stand.

25 THE COURT: Okay.



1 BY MR. LINDSAY:

2 Q Do you recognize what Exhibit 55 is?

3 A Yes, I do.

4 Q And what is that?

5 A This is a copy of the toxicology report that was  
6 generated by the lab at our office, and it gives  
7 drug testing results from the specimens that I  
8 took at autopsy.

9 Q And is this a standard part of an autopsy that  
10 would be performed at the Milwaukee County Medical  
11 Examiner's Office?

12 A Yes, it is.

13 Q And what specifically does this toxicology  
14 measure?

15 A The things that were tested for included alcohol  
16 and a drug screen.

17 Q And is this in relation to Mr. Sylville K. Smith,  
18 the decedent?

19 A Yes, it is.

20 Q And does his drug screen show anything of note  
21 with regard to the autopsy findings?

22 A His blood screen positive for cannabinoids, which  
23 is marijuana, and he also had cotinine in his  
24 blood, which is a product of cigarette smoking,  
25 and he also had oxycodone in his blood.

1 MR. LINDSAY: Your Honor, at this point  
2 I would move Exhibit 54 and 55 into evidence; that  
3 is the autopsy protocol and the toxicology report.  
4 I would also move Exhibit 62 into evidence.

5 THE COURT: Any objection?

6 MR. SMITH: No objection.

7 THE COURT: All will be received.

8 (Exhibit 54, 55 and 62 were received.)

9 MR. LINDSAY: This is the last item I  
10 anticipate publishing; that Exhibit 62, which is  
11 the fragment, be published to the jury, either at  
12 this point or during the next witness's testimony.

13 THE COURT: Meaning passed around?

14 MR. LINDSAY: Correct.

15 THE COURT: I don't care. We can do it  
16 now or later, but we're not doing it twice.

17 MR. LINDSAY: Correct.

18 THE COURT: You tell me what you want  
19 to do. It's only going to be passed around once.

20 MR. LINDSAY: I'll wait until the next  
21 witness, Judge.

22 THE COURT: Okay.

23 MR. LINDSAY: I have no further  
24 questions for this witness.

25 THE COURT: Cross-examination.

1 MR. SMITH: No questions, Your Honor.

2 THE COURT: All right. Thank you. You  
3 may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: We can take the picture  
7 down, unless you need it for something.

8 MR. LINDSAY: Your Honor, the State's  
9 next witness will be Mark Simonson.

10 THE COURT: Raise your right hand.

11 **MARK SIMONSON**, called as a witness  
12 herein, being first duly sworn, was examined and  
13 testified as follows:

14 THE COURT: Have a seat, please.  
15 Adjust the microphone. Tell us your name; spell  
16 your first and last name.

17 THE WITNESS: My name is Mark Simonson,  
18 M-A-R-K, S-I-M-O-N-S-O-N.

19 THE COURT: All right. You may  
20 proceed.

21 MR. LINDSAY: Thank you, Your Honor.  
22 And I'm having your bailiff examine Exhibit 34 and  
23 Exhibit 38 which are both firearms and determine  
24 whether they are safe at this point.

25 Your Honor, would you like to take a

1       STATE OF WISCONSIN       )  
2                                       ) ss.  
3       MILWAUKEE COUNTY       )  
4  
5

6                                       I, LAURELL L. BRESLOW-COLLIEN,  
7       Official Court Reporter in and for the Circuit Court of  
8       Milwaukee County, do hereby certify that the foregoing  
9       is a true and correct transcript of all the proceedings  
10      had in the above-entitled matter as the same are  
11      contained in my original machine shorthand notes on the  
12      said trial or proceedings.  
13

14      Dated at Milwaukee, Wisconsin on October 23, 2017.  
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20      \_\_\_\_\_  
21      Electronically signed by:  
22      LAURELL L. BRESLOW-COLLIEN, RPR  
23      OFFICIAL COURT REPORTER  
24  
25